THE NAVY YARD

It was the foresight of Benjamin Stoddard, the first Secretary of the Navy, which convinced Congress in 1799 to establish in Washington the first Government-owned Navy yard and drydocks large enough to build 74-gunners. After four name changes and four major wars, it no longer functions in this historic role. On December 31, 1961, the yard closed its industrial doors.

Today the yard, which is still Navy property, provides office and storage space for a number of Government agencies and housing for 14 admirals, most of whom live on "admiral's row". The best known of these residences is Tingey House, named after the yard's first commanding officer, Commodore Thomas Tingey. It was designed by the famous English architect Benjamin H. Latrobe. The house fronts on a manicured green around whose edge are cannons and naval pieces representative of those produced and used at the yard. Docked at the several piers are ships of the Reserve Fleet—a submarine and a destroyer—tugs, vessels of the Navy Diving School, and President's yacht the *Honey Fitz*, named by the late President Kennedy.

DISPLAY CENTER

The U.S. Naval Historical Display Center, located in the Navy Yard on the waterfront, is the Navy's newest museum.

Housed in a vast factory building built 33 years before the Civil War, the Center has on exhibit such items as a French Empire "dolphin" sofa from *Old Ironsides*, dioramas of several wars, ship models including the Confederate submarine *Hunley* and remnants from the steamer *Jeanette*, which was lost on an Arctic expedition in 1882.

More recent events have provided the museum with such items as the crook and lanyard used to haul Comdr. Alan B. Shepard from his spacecraft in 1961 and an exhibit depicting the loss of the nuclear-powered submarine U.S.S. *Thresher*.

On the green in front of the building are displayed some of the pieces manufactured in the yard's past: a Dahlgren gun, mortars, rockets, bombs, mines, submarines, and the first radar used aboard ship—and it still works.

The Display Center is under the command of Rear Adm. E. M. Eller, U.S. Navy (retired), Curator of Naval History, and is managed by Capt. Slade Cutter, U.S. Navy, and a small staff.

DECATUR HOUSE

After Commodore Decatur defeated the Barbary Coast pirates, he returned to Washington in 1816 to build a house for his bride, Susan Wheeler.

Built by Benjamin H. Latrobe, Decatur House soon became the social center of Washington under its charming hostess. Fourteen months later, however, Decatur was killed in a duel with Commodore James Barron, and Mrs. Decatur moved from the house.

Mrs. Truxtun Beale bequeathed the house to the national trust upon her death in 1956. Her family owned the house for over 80 years. The Beales head the list of such famous occupants of the fashionable Federal-style residence as: Henry Clay, Martin Van Buren, and Edward Livingston.

This fall the house will be closed for restoration. The elaborate Victorian gaslight chandeliers and furnishings on the second floor will remain, in tribute to the Beale's.

The first floor, though, will receive extensive restoration. The rare wood in the floor imported from California will be replaced by the original planking. Original Latrobe fireplaces will be put in place, and much of the carpentry work about the windows will change. Even the gardens will be replanted according to the 1816 plan.

TRUXTUN-DECATUR MUSEUM

Curiously, the museum bearing the name of two famous early American naval commanders houses our Nation's Civil War naval exhibits.

Located in the converted stables to Decatur House, it has recently been remodeled and the exhibits refurbished. Not only are the exhibits, models and relics of historical interest, but the display cases themselves have history. They are hand-me-downs from the earliest sections of the Smithsonian Institution. Built of fine woods of graceful design, they provide a striking contrast to the museum's modern interior.

[From the Washington Post]

BILLS CONSIDER NAVY YARD'S HISTORY

(By Richard Corrigan)

They used to wheel whisky into the Washington Navy Yard in 100-barrel lots, and the men would lay down their hammers for a minute and lay into the whisky. Commandant Tingey wanted things that way because the shipbuilders had been spending too much time in the grog shops and the gunboats weren't going down the slip fast enough.

That was back in the early 1800's, in the days when life along the Anacostia River really had a salty tang to it because the Washington Navy Yard was going to be the shipbuilding center of this new sea-going Nation.

Nowadays there is a water cooler alongside the slip, and the men talk about the tugboat that was in for repairs a couple of weeks ago. Sometimes a stiff breeze comes upriver, and there is a faint smell of the salty ocean far away, but the stronger taint comes from the dead fish floating belly-up in the channel.

RIVER VIEW GONE

From the commandant's house back by the Eighth Street gatehouse, there used to be a clear view across the green and down to the river. But even if the ghost of Thomas Tingey still prowles through that house carrying his brass spyglass under his nightshirt, as the legend has it, he can't see the river any more.

Instead, the view is of brick and plaster and TV antennas, of twisting streets and cobblestone alleys, of a crowded military reservation that buzzes to the uninspiring sounds of "administrative functions."

They don't build ships at the Navy yard any more, and they don't make cannon or guns or rockets or anything else. Other cities have deeper harbors and congressional pull, and all the contracts are gone.

So now the talk is of saving some of the oldest sections of the old yard for historic display. Several bills to this effect have been introduced in both Houses of Congress, with bipartisan sponsorship, and the Defense Department has been asked to submit its views on the project.

The yard is awash with history, just as the Anacostia itself used to wash over much of its 125-acre site. For a while it was Washington's biggest enterprise—until Tingey put the torch to it in 1812 when the British troops approached.

Tingey's house and the old gatehouse were saved, however, and the yard got back in business soon enough. Sloops and frigates and schooners were launched, and sailed off to the West Indies and the Barbary Coast and the Orient.

Yet the yard became more and more of an ordnance plant through the years, turning out cannon for the ships being built elsewhere. During the Civil War it was also used to hold Confederate prisoners, but at the end of that war there was talk of closing the place altogether.

ACTIVE IN WORLD WAR

During the First and Second World Wars the yard hummed again, and in the old brick buildings where sails used to be strung more cannon and guns were forged. At its peak days in World War II the yard employed 10,000, and every style of firepower the Navy used was made there.

In the immediate postwar years the yard was turning out rocket and missile components, too. But that didn't last either.

The place is officially called the Navy Yard again instead of the Naval Weapons Plant, and it serves as a training and office center for dozens of different functions, such as keeping watch over the Presidential yachts. But the General Services Administration is closing in to starboard, and the Library of Congress now keeps its catalog cards there.

The proposed legislation would shield the Tingey House, the old foundry and farmhouse and several other venerable buildings from such encroachment if the Navy should ever quit the yard. And old ships might tie up outside the new U.S. Naval Museum down at dockside to give the place more of a maritime look.

The legislation would save the yard from the sad fate that befell its first big sailing ship, the sloop of war *Wasp*, which in 1 short day in 1812 gained glory by capturing the British brig *Frolic* only to be overcome by another British ship, pressed into His Majesty's service and later lost at sea off the Virginia coast.

THE 130TH ANNIVERSARY OF THE ARRIVAL OF THE FIRST RAILROAD TRAIN IN THE CITY OF WASHINGTON

Mr. TYDINGS. Mr. President, today marks an important date in the history of railroad engineering. Today is the 130th anniversary of the arrival of the first railroad train in the city of Washington. It originated in the great city of Baltimore and operated on the Baltimore & Ohio Railroad line. The B. & O. was formed in 1827 to provide a means of transport between the port of Baltimore and the Ohio River. Its first terminus was Ellicott's Mills. It then progressed to Harper's Ferry and was completed in 1835.

While this main-line work was in progress, officials began to see the value of a branch line into Washington. Its necessity became increasingly evident as work was begun on connecting links from New York to Philadelphia to Baltimore, and a new line was begun from Relay House to the Nation's Capital. Three river crossings were necessary along the way. The bridge over the Patapsco River near Relay is still in use, and stands as a monument to the outstanding ability of Benjamin H. Latrobe, the engineer who designed it. Students of architecture who are familiar with the construction details of our Capitol Building will recall the name. The father of the B. & O. engineer was famous as an architect and was called to Washington by President Jefferson and given the task of completing the Capitol Building.

The bridge was built to hold 6-ton locomotives, but daily carries hundreds of tons of railroad equipment, bespeaking the grandure of the structure. It is 700 feet long, has 8 elliptical arches, each 60 feet in width, and about 65 feet above the

level of the stream, and is built on a curve.

Railroad buffs in Maryland have not forgotten that glorious day in 1935 when the 100th anniversary of that famous Baltimore to Washington ride was commemorated. Mr. Allan H. Constance, one of Maryland's leading railroad enthusiasts, has sent me a copy of the description of that day 30 years ago. Mr. President, I ask unanimous consent to include at this point in the RECORD a description of that day as taken from "The Story of the Baltimore & Ohio Railroad," by Edward Hungerford.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

It is the 25th day of August 1935, and a warm summer sun already is shining down upon the heads, the hats and the parasols of the privileged folk who are making their way to the immaculate new cars drawn up in Pratt Street just opposite the inner depot at Charles. Nearly a thousand folk come to ride upon this excursion. * * * Sixteen cars are not going to be enough for all this throng. A messenger is sent on horseback up to Mount Clare. More cars come sliding down through pleasant, tree-embowered Pratt Street.

Off and away, at last. Up the long hill toward the edge of the town and the upper depot. And here at the upper depot, four brandnew locomotives, spic and span and shined almost to the last possibility of human effort * * *. These engines have been built by Baltimore manpower. * * * They are also of the upright boiler type, which, with its huge, ungainly rods and arms and joints, is beginning to be known colloquially in Baltimore as the "grasshopper" engine.

These engines—the George Washington, the John Adams, the Thomas Jefferson, and the James Madison—divided the heavily laden cars among them.

A little delay and they are off * * *. By this time the road up to the wonderful new stone bridge over the Patapsco—curious how these Baltimore folk will persist in calling it Latrobe's Folly * * * is fairly familiar. But beyond, the country is new to most of the party, save to those who have been steady travelers over the Washington Turnpike—Bladensburg is the first stop. The party disregards the instructions in the morning paper and go tumbling out there. A trainload of bigwigs over from Washington comes forward to meet the Baltimore trains * * *.

The new depot in Washington at the foot of the hill just back of the Capitol (Pennsylvania Avenue and Second Street) was by no means complete, but the trains were able to approach it and there discharge their passengers who formed themselves behind a military band and proceeded to Gadsby's and Brown's Hotels, where there was a customary banquet * * *. At half past 4 o'clock, the four trains were again in motion, homeward bound. And the record of the memorable day in the annals of the Baltimore & Ohio closes with the fact that the upper depot at Mount Clare was reached 2 hours and 20 minutes later.

THE SHORTAGE OF APPLE PICKERS

Mrs. SMITH. Mr. President, the Lewiston Daily Sun, one of the great newspapers of Maine and noted for its excellent editorials, has literally hit the nail on the head in its editorial of August 20, 1965, entitled "No Canadian Apple Pickers." I ask unanimous consent that it be placed in the body of the RECORD at this point.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

NO CANADIAN APPLE PICKERS

The U.S. Secretary of Labor, W. Willard Wirtz, has advised Senator MARGARET CHASE SMITH that it will not be necessary to import Canadian workers to harvest the apple crop in Maine this year. Enough American workers will be available, he said.

We hope that Secretary Wirtz proves to be correct. The apple harvest is nearly upon us and it won't wait. Either the apples are picked when ready, or they spoil, like any other produce.

The Maine Employment Security Commission has launched a program to recruit workers for the apple growers, and the U.S. Department of Labor is financing recruitment efforts. Meanwhile, apple growers themselves are looking around for willing hands to take part in the harvest. Their entire investment is at stake. If apples go unpicked, they represent a dual loss: The apples themselves and the fact that the public has to pay a premium price for those harvested if the supply is not normal.

Last year, about 1,100 workers were employed for the Maine apple harvest. About 400 of them were Canadian migrant workers. The latter are the ones which Secretary Wirtz want to replace with Americans, in order to bolster employment in the United States.

In the days ahead, the success of the recruitment efforts will be decided. If an insufficient number of Americans sign up, then Secretary Wirtz should exercise his authority and grant an exception for the importation of the necessary Canadian workers. It would be poor economics to let the apples go to waste for lack of pickers, while a willing labor force sits on its hands across a friendly border.

Mrs. SMITH. Mr. President, I have three observations to make on this matter. First, I wonder if Secretary of Labor Wirtz realizes the great jeopardy in which he is placing Maine applegrowers—and the great economic loss with which Maine is threatened because of his policy thus far.

Second, surely he can do for the applegrowers of Maine what he has done for the potato growers, instead of discriminating against the applegrowers.

Third, I wonder if he realizes that his policy and lack of action in this matter is giving those of us who have not made a final decision on the proposed repeal of section 14(b) strong motivation for voting against repeal of section 14(b).

LLM

BIG BROTHER: NEED FOR NEW WIRETAP LAW

Mr. LONG of Missouri. Mr. President, last February I received a most interesting letter from Judge Samuel H. Hofstadter, of the Supreme Court of New York, on the need for new wiretap legislation. The judge and Prof. George Horowitz have authored the book "The Right to Privacy."

More recently, the judge published a most provocative letter in the New York Herald Tribune, July 31, 1965, on the same subject.

Having received the judge's permission, I ask unanimous consent to have both these letters and a decision printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Herald Tribune, July 31, 1965]

A FEDERAL WIRETAP LAW

To the Herald Tribune:

Your editorial, "Wiretapping Gone Wrong" (July 18), is most cogent. It is timely, too, because of the hearings recently held in Washington by the Judiciary Subcommittee on Administrative Practice and Procedure (of which U.S. Senator EDWARD V. LONG, of Missouri, is chairman).

Instead of flouting existing law, all governmental officers, both Federal and State, will be better advised to cooperate in formulating a rational compromise in an endeavor to secure congressional approval for use of "taps" in such areas as subversion, murder, kidnaping, racketeering, and the like. The President's action (occasioned by the abuses of the Revenue Service), purporting to restrict unlawful practices is commendable, but not adequate, especially because it is without basis in existing law. Rigid controls, such as prior judicial approval, should be imposed by congressional legislation to prevent abuse. Unauthorized "taps" should be severely punished; and they should not be received in evidence in any civil or criminal case.

The dismal art of wiretapping has engendered sharp conflict, raising issues on which equally intelligent and well-meaning people hold different opinions. Some would permit it freely by law enforcement officers; others would limit it; still others would outlaw it altogether, believing that possible advantage is outweighed by the potential mischief which inheres in its use. But the American principle of honorable accommodation dictates that we adopt a reasonable compromise to solve the tangled issue—including the vexing problem of Federal-State relations—by securing Federal legislation to permit use of "taps" in limited areas by State as well as Federal officers, under strict supervision—and sanctions for excesses. This offers a fair balance between the right of privacy and the needs of modern law enforcement.

Under existing law (section 605 of the Federal Communications Act), all "tapping"—by either Federal or State officials—is unlawful. Conduct to the contrary by constituted authorities (including the FBI) has been a grave disservice. The Federal act overrode any State enactments—such as we have in New York—purporting to authorize wiretapping. The U.S. Supreme Court explicitly so ruled in the Benanti case in 1957.

Since then, some enforcement officers have honored this ruling; others have not. Moreover, New York's appellate courts have upheld the use of taps, though illegally secured, in both civil and criminal cases. Under any new Federal legislation it should be rendered manifest that this course is proscribed except in the limited areas indicated.

Until restricted and explicit Federal legislative approval is forthcoming, no "taps" should be "authorized," nor made, nor received in evidence in any court. How shall there be respect for the law of authority if authority does not respect the law?

SAMUEL H. HOFSTADTER.

NEW YORK, N.Y.,
February 16, 1965.

Senator EDWARD V. LONG,
Chairman, Subcommittee on Administrative Practice and Procedure of the Judiciary Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR LONG: Instead of flouting existing law, enforcement officers, both Federal and State, will be better advised to co-

operate in formulating a rational compromise in an endeavor to secure congressional approval for use of "taps" in such limited areas as subversion, murder, kidnaping and the like. Rigid control, such as prior judicial approval, should be imposed to prevent abuse. Unauthorized "taps" should be severely punished; and they should not be received in evidence in any civil or criminal case.

The dismal art of wiretapping has engendered sharp conflict; raising issues on which equally intelligent and well-meaning people hold different opinions. Some would permit it freely by law enforcement officers; others would limit it; still others would outlaw it altogether, believing that possible advantage is outweighed by the potential mischief which inheres in its use. I incline to the latter view. But the American principle of honorable accommodation dictates that we adopt a compromise to solve the tangled issue—including the vexing problem of Federal-State relations by securing Federal legislation to permit use of "taps" in limited areas by State as well as Federal officers, under strict supervision and sanctions for excesses. This offers a fair balance between the right of privacy and the needs of modern law enforcement.

Under existing law (sec. 605 of the Federal Communications Act), all "tapping"—by either Federal of State officials—is unlawful. Conduct to the contrary by constituted authorities (including the FBI) has been a grave disservice. And the intransigence of the "absolutists" has compounded the difficulty. For, it has postponed action by Congress which alone can resolve the impasse.

The Federal act overrode any State enactments—such as we have in New York purporting to authorize wiretapping. The Supreme Court has explicitly so ruled. In the Benanti case decided on December 9, 1957, Chief Justice Warren said: "The constitution and statutes of the State of New York provide that an ex parte order authorizing wiretapping be issued by judges of a certain rank. * * * [But] keeping in mind the comprehensive scheme of interstate regulations, we find that Congress, setting out a prohibition in plain terms, did not mean to allow State legislation which contradicts that section [605] and policy."

On January 2, 1958, in a formal memorandum (a copy of which is enclosed) I advised enforcement and prosecuting officers that I could not, and would not, honor any applications for a wiretap authorization, saying: "Clearly a judge may not lawfully set the wheels in motion toward the illegality by signing an order—the warrant itself partakes of the breech, willful or inadvertent, of the Federal law. Such breach may not find sanction in the orders of courts charged with the support of the law of the land and with enforcing that law."

Since then District Attorney Hogan, of New York County, and perhaps others, have desisted from either applying for any authorization to acquire taps or to use them if others secured them contrary to law. Unfortunately, still others have not been so scrupulous in honoring the supreme law of the land. Moreover, appellate courts have upheld their use in both civil and criminal cases. Under any new Federal legislation it should be rendered manifest that this course is proscribed except in the limited areas indicated.

Until such restricted and explicit Federal legislative approval is forthcoming, no "taps" should be "authorized," nor made, nor received in evidence in any court. How shall there be respect for the law of authority if authority does not respect the law?

Cordially yours,

SAMUEL H. HOFSTADTER,
Justice, Supreme Court,
State of New York.

COPY OF MEMORANDUM OF MR. JUSTICE SAMUEL H. HOFSTADTER RE WIRETAPPING IN PROCEEDINGS AT SPECIAL TERM, PART II OF THE SUPREME COURT, NEW YORK COUNTY, JANUARY 2, 1958

SUPREME COURT, NEW YORK COUNTY, SPECIAL TERM, PART II—IN THE MATTER OF INTERCEPTION OF TELEPHONE COMMUNICATIONS

J. HOFSTADTER. Under the decision of the U.S. Supreme Court in *U.S.* v. *Benanti*, 26 U.S. Law Week, 4045, decided December 9, 1957, no wiretap order pursuant to section 813a of the Code of Criminal Procedure [1] may lawfully be issued.

As we have no system of advisory opinions in this State and, according to our practice, applications for wiretaps are made at special term part II, this memorandum will apprise enforcement and prosecuting officers that while I preside at special term part II during this month, no application for a wiretap order will be honored.

Under the decision in Benanti, orders authorizing interceptions are contrary to controlling Federal law. Its authority requires me, therefore, to deny any applicaiton for such an order. For all wiretaps, whether "authorized" or not, in this State are now illegal. In Matter of Interception of Telephone Communications, 207 Misc. 69, I denied an application in the exercise of discretion; any further application would have to be denied because of lack of lawful competence.

There may be those who differ from this interpretation of the Supreme Court decision. In that event, the result of these proceedings may be the salutary one that the view expressed here can be challenged and become the subject of authoritative determination by our State appellate courts; subject, of course, to any ultimate review in the U.S. Supreme Court.

Recent decisions of the Supreme Court of the United States have adumbrated the expectancy that legal safeguards will provide the needed bridge between the moral and legal law. Time and again, the gap between moral and legal law has been spanned—sometimes by the slow and painful process of the innovation of time, and sometimes by a courageous leap into the future. Such an advance has been effected by the Benanti case. In clear accents, it tolls the knell of all wiretapping, including so-called legal wiretapping, in our State. Following the holding in *Weiss* v. *U.S.*, 308 U.S. 321 it flatly proclaims, in language which no one can mistake, that an interception of a telephone communication, even by a State law enforcement officer acting under an order issued pursuant to section 813a, constitutes a violation of section 605 of the Federal Communications Act (47 U.S.C., title 47). Its expressions are compelling—it is explicit that the warrant of the order does not make the wiretap legal; it is implicit that the order itself is unlawful.

New York police officers, suspecting one Benanti of dealing in narcotics, obtained a wiretap order from the court. As a result of the wiretap he was arrested. It was found that he was not a dealer in narcotics but a bootlegger of whisky. He was turned over to Federal agents for prosecution. On his trial the State officers were permitted to testify to the wiretapped conversation. On appeal from his conviction the U.S. court of appeals decided, as a matter of first impression, that where there is no participation by a Federal officer the Communications Act does not bar, in a Federal court, the admissibility of evidence obtained by State officers by wiretaps in violation of the act.

The Supreme Court disagreed with this conclusion. It held unanimously that wiretapping by New York State law enforcement officers, although authorized by the State constitution and statutes, violated Federal law and the evidence was inadmissible. The Court found no exemption for State officials in section 605 of the Federal Communications Act of 1934, which reads: "No person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication * * *."

Chief Justice Warren said: "The constitution and statutes of the State of New York provide that an ex parte order authorizing a wiretap may be issued by judges of a certain rank * * *. It is not urged that, constitutionally speaking, Congress is without power to forbid such wiretapping even in the face of a conflicting State law * * *. Rather the argument is that Congress has not exercised this power and that section 605, being general in its terms should not be deemed to operate to prevent a State from authorizing wiretapping in the exercise of its legitimate police functions. However, we read the Federal Communications Act and section 605, in particular, to the contrary. The Federal Communications Act is a comprehensive scheme for the regulation of interstate communication. In order to safeguard those interests, protected under section 605, that portion of the statute pertinent to this case applied both to intrastate and to intersate communicaions * * *. In light of the above considerations, and keeping in mind this comprehensive scheme of interstate regulation and the public policy underlying section 605 as part of that scheme we find that Congress, setting out a prohibition in plain terms, did not mean to allow State legislation which would contradict that section and that policy (cp. *Pennsylvania* v. *Nelson*, 350 U.S. 497; *Hill* v. *Florida*, 325 U.S. 538; *Hines* v. *Davidowitz*, 312 U.S. 52)."

In the Benanti case, the U.S. court of appeals for this circuit had said: "Despite the warrant issued by the New York State court pursuant to New York law, we have no alternative other than to hold that by tapping the wires, intercepting the communication made by appellant and divulging at the trial what they had overheard, the New York police officers violated the Federal statute (*Nardone* v. *U.S.*, 302 U.S. 379, 308 U.S. 338; *Weiss* v. *United States*, 308 U.S. 321). Section 605 of 47 United States Code is too explicit to warrant any other inference—and the Weiss case made its terms applicable to intrastate communications" (244 Fed 2d 389).

These views of the court of appeals regarding the illegality of the authorized wiretap were confirmed by the Supreme Court, but its ruling of the admissibility of the fruits of the tap was overruled, the Supreme Court basing its decision on the intent of the Federal Communications Act.

After its first pronouncement, the U.S. court of appeals, several months later, reiterated its views on the illegality of intrastate interceptions, saying: "Appellant next contends that the act does not apply to the calls he intercepted, because they were intrastate in character rather than interstate or foreign. This contention is completely refuted by *Weiss* v. *U.S.* (308 U.S. 321), wherein the Court said at page 327: '* * * Plainly the interdiction thus pronounced is not limited to interstate and foreign communications. And, as Congress has power, when

[1] So far as here material, sec. 813a of the Code of Criminal Procedure (enacted under art. I, sec. 12 of the State constitution) reads: "An ex parte order for the interception * * * of * * * telephonic communications may be issued by any justice of the Supreme Court * * * when there is reasonable ground to believe that evidence of crime may be thus obtained * * *." Any reference in this memorandum to this section applies only to telephone interceptions.

necessary for the protection of interstate commerce, to regulate intrastate transactions, there is no constitutional requirement that the scope of the statute be limited so as to exclude intrastate communications.' And at page 329: 'We hold that the broad and inclusive language of the second clause of the section is not to be limited by construction so as to exclude intrastate communications.'" (*United States* v. *Cris*, 247 Fed. 2d 860.)

Thus, section 605, as interpreted by controlling Federal judicial authority renders unlawful the interception of all telephone messages within our State, even by an officer acting under an order of this courts; it cannot be within the competence of this court, properly exercised, to "authorize" such an unlawful act—section 813a of the Code of Criminal Procedure to the contrary notwithstanding. For "in case of conflict, the State law, not an otherwise unobjectionable Federal statute, must give way," under the Constitution. (*United States* v. *Gris, supra.*)

The supremacy clause of the U.S. Constitution, article VI, clause 2, provides: "This Constitution, and the Laws of the United States, which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding." And, since *Gibbons* v. *Ogden*, 9 Wheaton 1, it has been firmly established that when Congress enacts legislation within its competence, and it becomes the "supreme law of the land" under the Constitution, State interests must yield to the paramount national concern. The law of the General Government governs. The exercise by Congress of its power is absolute—it precludes, modifies, or suspends—as the case may be—local legislation in conflict or inconsistent with Federal enactments.[2]

In the interpretation and construction of Federal statutes, Federal judicial rulings are controlling.[3] The Supreme Court has held that the Communications Act is an "express, absolute prohibition" against interception or divulgence of wiretapping with no qualifications—that when State officers indulge in wiretapping they are violating Federal law and subject themselves to Federal prosecution. So long, therefore, as section 605 of the Federal Communications Act remains the law, so much of section 813a of our Code of Criminal Procedure which permits interceptions, is inoperative.

Hence, even when authorized, interceptions of telephone messages within this State are illegal. Yet, orders have been issuing and interceptions have been made. As Benanti and Gris now make it painfully clear, the orders so issuing out of the courts to "authorize" interceptions, have been void because contrary to law.

These decisions require that we now cease and desist, for it cannot be lawful to authorize what is an illegal act. It is more and worse than a mere futility—for if the police officer violates the Federal statute by tapping wires notwithstanding a warrant issued out of this court pursuant to New York law—if that act be illegal—those who set the act in motion have condoned if not instigated illegality. Clearly a judge may not lawfully set the wheels in motion toward the illegality by signing an order—the warrant itself partakes of the breach, willful or inadvertent, of the Federal law. Such breach may not find sanction in the orders of courts charged with the support of the law of the land and with enforcing that law:

Dated January 2, 1958.

J.S.C.

A unanimous decision, handed down by the Supreme Court of the United States on December 9, 1957, affects the course of this part—special term part II—of our court, in an important area, namely, applications for orders under section 813a of the Code of Criminal Procedure. On the first day of the opening of Court, therefore, it is appropriate to record this court's opinion of the matter as it will affect the action to be taken by me while I preside at special term part II during this month.

In view of recent events, it seems especially desirable that the matter be clarified promptly.

It is desirable that the practice of this and other courts be uniform. If the views herein expressed are correct they will be sustained by appellate authority; if I have erred they should be redressed promptly by proper review in an appropriate proceeding.

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

DEPARTMENT OF DEFENSE APPROPRIATIONS, 1966

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business be laid before the Senate.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 9221) making appropriations for the Department of Defense for the fiscal year ending June 30, 1966, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate resumed the consideration of the bill.

ORDER OF BUSINESS

Mr. STENNIS. Mr. President, I yield to the Senator from Montana for the purpose of making such remarks as he may see fit.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to consider executive business to consider the nomination for the Tax Court only.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGES REFERRED

The VICE PRESIDENT laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

EXECUTIVE REPORT OF A COMMITTEE

The following favorable report of nominations was submitted:

By Mr. MONRONEY, from the Committee on Post Office and Civil Service:

One hundred and ninety-six postmaster nominations.

The PRESIDING OFFICER. If there be no further reports of committees, the clerk will state the nomination on the Executive Calendar.

TAX COURT

The Chief Clerk read the nomination of Charles R. Simpson, of Illinois, to be a judge of the Tax Court of the United States for the unexpired term of 12 years from June 2, 1956.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, the President will be notified forthwith.

LEGISLATIVE SESSION

On request of Mr. MANSFIELD, and by unanimous consent, the Senate resumed the consideration of legislative business.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

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[2] *Commonwealth of Pennsylvania* v. *Nelson* restated the rules for determining whether a Federal statute may be supplemented by a State enactment, where, as here, Congress has not stated specifically that its legislation fully occupied a field in which the States would otherwise be free to legislate. The touchstones for decision, said the Supreme Court, were: First, that the scheme of Federal regulation was so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. Second, that the Federal statute touched a field in which the Federal interest was so dominant that the Federal system must be assumed to preclude enforcement of the State laws on the same subject. Third, that enforcement of the State statute would present a serious danger of conflict with the Federal program.

[3] *Sadowski* v. *L.I.R.R. Co.*, 292 N.Y. 448, 453; *Brown* v. *Remembrance*, 279 App. Div. 410, 412, affd. 304 N.Y. 909; *Ruggiero* v. *Liberty Mutual Ins. Co.*, 272 App. Div. 1027, affd. 298 N.Y. 775; see also *Bailey* v. *Central Vermont Ry.*, 319 U.S. 350, 352; *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Coogan*, 271 U.S. 472, 474; *Jacobs* v. *Reading Co.*, 130 F. 2d 612, 614; *Albert Pick & Co.* v. *Wilson*, 19 F. 2d 18, 19. It is implicit in the cases constituting prevailing authority that authoritative Federal decisions even when not those of the Supreme Court, govern; it has been rendered explicit, too. See especially *Ruggiero* v. *Liberty Mutual Ins. Co.*, supra.